

**MANATT
PHELPS
PHILLIPS**
ATTORNEYS AT LAW

Ronald B. Turovsky

August 11, 1997

By Facsimile and Overnight Delivery

Eugene Bull, Esq.
Office of the General Counsel
Federal Election Commission
999 "E" Street, N.W.
Washington, D.C. 20463

Re: MUR 4389 – Response of Prince for Congress Committee and Jim Prince

Dear Mr. Bull:

I. Introduction.

In their "Statement of Reasons" in MUR 2766, three commissioners of the Federal Election Commission (the "FEC"), in explaining why they declined to adopt the recommendation of the Office of the General Counsel to find reason to believe that the respondents had violated the Federal Election Campaign Act of 1971 (the "FECA"), wrote:

"This case illustrates how the FEC's General Counsel . . . [has] tilted way too far in the direction of treating this form of political expression [independent expenditures] as inherently suspect, presumptively illegal and automatically subject to wide-ranging investigation. No matter how broad and emphatic the denials or extensive the explanation of conduct, they endlessly pick apart the responses to allegations of coordination to contrive nagging doubts and niggling questions.

The Commission cannot turn independent expenditures into presumptively illegal activity, however."

Statement of Reasons, MUR 2766, Statement of Chairman Lee Ann Elliott, Commissioner Joan D. Aikens, and Commissioner Thomas J. Josefiak (1990) ("Statement of Reasons").

The same could be written in this matter involving the Prince for Congress Committee (the "Prince Committee"), Jim Prince, as treasurer ("Mr. Prince"), Paul and Debra Lee LaPrade (the "LaPrades"), the Orange County Democratic Central Committee (the "Party"), and

15 JUL 15 7 1 54 PM '97

28044204566

Eugene Bull, Esq.

August 11, 1997

Page 2

James Toledano ("Mr. Toledano"). Despite the broad and emphatic denials of all of the parties to the matter (except Mr. Toledano, who acknowledges an error), the responses have been picked apart to contrive "nagging doubts and niggling questions." The FEC has favored unreliable purported statements from newspaper articles to sworn statements in declarations. The FEC has transformed what at most appears to have been an error on the part of one person, Mr. Toledano, into multiple violations by numerous parties and, in the case of the Prince Committee and Mr. Prince, two potential violations of the FECA.

The FEC should not have found that there was reason to believe that the Prince Committee and Mr. Prince committed violations of the FECA. The FEC now should find that there is not probable cause that the Prince Committee and Mr. Prince committed a violation and the matter should be closed as to them, for the reasons stated below.

The Prince Committee and Mr. Prince have already explained in a letter submitted on their behalf, supported by Mr. Prince's declaration dated July 21, 1996, their fundamental position in this matter. A copy of that letter and Mr. Prince's declaration are attached and incorporated herein by reference and will not be repeated. Rather, in this letter, the specific concerns of the FEC, as they can be discerned from the "Factual and Legal Analysis" submitted with the FEC's letter dated June 27, 1997, will be addressed.

II. The FEC's Focus On the Photo Is Misplaced.

The FEC quickly concludes that the Party made a contribution, and that the activity did not constitute an independent expenditure. The overall issue has been addressed in the July 24 letter and will not be repeated here.

There appear to be two points upon which the FEC relies to conclude that a contribution was made. First and most important, the FEC writes in the analysis section of its "Factual and Legal Analysis" that the "Prince Committee helped Mr. Toledano to obtain a photograph of Jim Prince to use in the production of the mailer." This "fact" appears to cause the FEC to conclude that the expenditure was not an independent expenditure and was instead an in-kind contribution. Second, the FEC appears to rely upon the belief that the Prince Committee had earlier considered a plan to give money to the Party to publicize the Party's endorsement of Mr. Prince, but dropped the plan for lack of funds.

With respect to the LaPrades, the FEC apparently contends that a contribution of \$5,000 each to a party committee would be lawful, but that this was really a contribution by the LaPrades to the Prince Committee, not to the Party. In the FEC's analysis to support its conclusion as to the Prince Committee and

28044204567

Eugene Bull, Esq.
August 11, 1997
Page 3

Prince, however, the FEC takes a different tack. The FEC argues that this was a contribution by the Party to the Prince Committee, not by the LaPrades to the Prince Committee. The FEC then contends that the transaction was a contribution, not an independent expenditure, because the Prince Committee allegedly assisted the Party in obtaining a campaign photo. The FEC does not cite any evidence to suggest that there was any cooperation or consultation between Prince and the LaPrades. To the extent the transaction was between the LaPrades and Prince, not the Party and Prince, there is no evidence of any cooperation or coordination.

With respect to the photograph, the FEC appears to rely on the statement by Mr. Toledano that "I did not speak with Jim Prince or the Prince campaign about the contribution or the mailer except to request a photograph; I was referred to a photographer who ultimately delivered a photograph to the printer." From that, the FEC concludes that there was sufficient consultation and cooperation. Accepting that this is what happened for purposes of discussion, that would not demonstrate sufficient cooperation and coordination between Mr. Toledano and the Prince Committee. This certainly does not demonstrate that the Prince Committee gave a photograph to Mr. Toledano. There was no indication that anything was discussed as to why the photograph was requested and specifically that the photograph was requested for a mailer. Presumably, anyone who called the Prince Committee and asked for a photograph of Mr. Prince, a candidate for elective office, would be treated the same way and would be assisted. This is a meaningless fact. To rely on this alone to demonstrate consultation and coordination "illustrates how the FEC's General Counsel . . . [has] tilted way too far in the direction of treating this form of political expression [independent expenditures] as inherently suspect, presumptively illegal and automatically subject to wide-ranging investigation" and an example of the FEC turning "independent expenditures into presumptively illegal activity." Statement of Reasons, MUR 2766. The FEC's conclusion and analysis seems particularly inappropriate in light of the Supreme Court's recent decision in *Colorado Republican Federal Campaign Committee v. Federal Election Commission*, 116 S.Ct. 2309 (1996).

The FEC's analysis is equally flawed with respect to its apparent contention that the Prince Committee received a contribution because it had considered a plan to give money to the Party to publicize its endorsement of Mr. Prince, but dropped the plan for lack of funds. The basis for this appears to be nothing more than a newspaper article once more.

First, there is no legitimate, reliable evidence to support the factual conclusion. While it is uncertain what the FEC relies upon to make this conclusion, the assertion appears to be based on nothing more than a reference in a *newspaper article*. Needless to say, the evidentiary value of a newspaper article is limited, particularly where, as in this instance, it contains multiple hearsay. It should not be used to support the FEC's analysis.

In any event, even if this had happened, this would not show that there was cooperation and consultation with respect to the mailer. Whatever prior discussions were held on

28044204568

Eugene Bull, Esq.

August 11, 1997

Page 4

this other subject has nothing to do with whether there was cooperation or consultation with respect to the mailing. It also should be noted that this is a common, proper activity involving parties and their endorsed candidates.

III. Contribution.

To the extent the FEC were to conclude that this transaction involved a contribution despite the above information, there should not be a finding of probable cause as to the Prince Committee and Mr. Prince.

The FEC appears to conclude that the Prince Committee received an excessive contribution from the Party. In section IIA of the FEC's Factual and Legal Analysis, the FEC summarizes the statements made by Mr. Prince, but apparently gives no consideration to those statements beyond that. In the analysis section, for example, these statements are ignored; the FEC simply states that the value of the mailer was in excess of the \$1,000 limit, the use of the funds did not all within the exemption under 11 C.F.R. § 100.7(b)(9), and therefore there were two violations, without any reference to Mr. Prince's declaration.

The statements made by Mr. Prince should not be disregarded. At a minimum, they demonstrate that there would be no purpose served by the imposition of a punishment against the Prince Committee and Mr. Prince. They further demonstrate that the Prince Committee did not know it had received a contribution and that it had no knowledge that there was anything to report.

It should also be noted that, to reach the conclusion that the Prince Committee and Mr. Prince received an excessive contribution, the FEC has followed a tortured path, filled with narrow readings and full of "20-20 hindsight." We understand that the LaPrades have stated that they intended to make a contribution to a party committee within the contribution limits, and that this position was rejected by the FEC because the FEC has concluded that the LaPrades knew that the money would be spent on behalf of the Prince Committee. Similarly, Mr. Toledano has stated that he "intended in good faith" that this "be an exempt slate mailer or under what I understood was the general exemption for educational advertising by a political party to promote voter awareness" pursuant to 2 U.S.C. § 431(8)(B)(v) and 11 C.F.R. § 100.7(b)(9); he apparently did not understand that three candidates had to be listed, not two. In short, the Prince Committee would have had to anticipate and understand in advance that the LaPrades had fallen within this narrow exception to their right to contribute to a party committee and that Mr. Toledano would act in this mistaken fashion by including only two candidates, not three. Moreover, if Mr. Toledano's position is correct, that he made errors while attempting to engage in exempted activities with respect to this mailer, that suggests even more strongly that there should be no action taken as to Mr. Prince and the Prince

28044204569

MANATT, PHELPS & PHILLIPS, LLP

Eugene Bull, Esq.

August 11, 1997

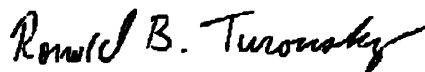
Page 5

Committee. If Mr. Toledano had complied with the rules, none of the other respondents would be in this situation.

IV. Conclusion.

Overall, the Prince Committee and Mr. Prince acted in good faith in all respects and certainly did not knowingly and willfully accept a contribution in excess of the limitations or intentionally fail to report the transaction. Mr. Prince was not successful in the race and should be given a chance to put this behind him. The FEC should conclude that, as to the Prince Committee and Mr. Prince, there is no probable cause to believe that there has been a violation of the FECA.

Very truly yours,



Ronald B. Turovsky
Manatt, Phelps & Phillips

RBT:pesl

28044204570